

REMARKS

This responds to the Office Action mailed on January 12, 2004.

Claims 90, 103, 107, and 110-112 are amended. Claim 109 is canceled. Claims 115-128 are added. As a result, claims 90, 93-108 and 110-128 are now pending in this application.

Claim 111 is amended to correct a typographical error.

Claims 115-128 are new. Applicant believes that new claims 115-128 are fully supported by the specification, introduce no new matter, and are patentable over the cited references. Therefore, Applicant respectfully requests allowance of claims 115-128.

§112 Rejection of the Claims

The Office Action asserted that “the electrode” in line 6 of claim 107 lacks antecedent basis. (See Office action at page 2, paragraph 3.) Accordingly, claim 107 is amended. Because this amendment was made merely to provide antecedent basis for an already recited claim element, Applicant respectfully submits that this amendment is non-narrowing. Applicant respectfully requests withdrawal of this basis of rejection of claim 107.

§102 Rejection of the Claims

Claims 90, 93-109 and 111-114 were rejected under 35 U.S.C. § 102(b) for anticipation by Baudino et al. (U.S. Patent No. 5,927,277), hereinafter Baudino. Claim 109 is cancelled, thereby rendering the rejection of claim 109 moot. With respect to the other claims, however, Applicant respectfully traverses, as discussed below.

Concerning claims 90 and 93 – 102:

Applicant cannot find any disclosure in Baudino of a stabilizer to engage the instrument inserted through the burr hole, the stabilizer including a movable member, wherein an edge of the moveable member and an opposing surface of the stabilizer define a radial opening that extends inward from an outer perimeter of the stabilizer, and the opening is sized and shaped to immobilize the instrument with respect to the burr hole, as presently recited or incorporated in claims 90 and 93-102.

Instead, Baudino apparently discloses a stabilizer with opposing jaws (46, 52) extending from an inner perimeter of the stabilizer 40. (See, e.g., Baudino at FIG. 9.) The jaws apparently

immobilize an instrument 55 only in one of the openings 57. Therefore, Baudino fails to allow an instrument to be secured near the outer periphery of the stabilizer. The limited range in which Baudino can secure the instrument limits its usefulness to a physician that may want to secure the instrument at any desired location within the lumen defined by the burr hole ring 10 of Baudino.

Because, among other things, Baudino apparently does not include a radial opening that extends inward from an outer perimeter of the stabilizer, it does not disclose all elements that are presently recited or incorporated in claims 90 and 93 – 102. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claims 103 – 106:

Applicant cannot find any disclosure in Baudino of a movable member that is hingedly coupled to a disk to adjustably overlay a portion of a radial slot to clamp the instrument within the radial slot, wherein the disk and the movable member substantially cover the access lumen when the moveable member is engaged to the disk in a closed position, as presently recited or incorporated in claims 103-106.

Instead, Fig. 9 of Baudino discloses opposing jaws that, in their closed position, leave much of the underlying burr hole exposed, covered only by the soft polyurethane or silicone plug 90. (See Baudino at column 7, lines 7 – 9.) By contrast, claims 103 – 106 recite a disk and movable member that, in their closed position, substantially cover the access lumen. This offers an additional level of protection for the underlying critical brain tissue. Because Baudino does not disclose all elements that are presently recited in claims 103 – 106, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

Concerning claim 107:

Applicant cannot find any disclosure in Baudino of a radial slot that is positionable over substantially the entire access lumen to clamp an electrode anywhere along the radial slot, as presently recited in claim 107.

Instead, as discussed above with respect to claims 90 and 93 - 102, Baudino apparently fails to permit an electrode to be secured near the more peripheral portions of the burr hole. Furthermore, as also discussed above with respect to claims 90 and 93 – 102, the opposing jaws of Baudino apparently immobilize an instrument 55 only in one of the openings 57, rather than anywhere within the opposing jaws. Thus, the Baudino device offers relatively limited locations

in which an instrument may be immobilized within a burr hole, particularly when compared to the device disclosed in the present patent application and recited in claim 107. Because Baudino fails to disclose a radial slot that is positionable over substantially the entire access lumen to clamp an electrode anywhere along the radial slot, as presently recited in claim 107, Applicant respectfully requests withdrawal of this basis of rejection of this claim.

Concerning claims 108:

Applicant cannot find any disclosure in Baudino that meets the recited means for securing an instrument extending through the access lumen and the burr hole. Claim 108 is a means-plus-function claim under 35 U.S.C. § 112, paragraph 6. MPEP 2183 requires the Examiner to make a *prima facie* case of equivalence under 35 U.S.C. 112, paragraph 6. However, the Examiner has not presented an explanation or a rationale as to why the disclosure of Baudino is equivalent to the corresponding elements disclosed in the specification as is required by the MPEP 2183. Instead, the Office Action merely states:

Regarding claim 108, Baudino et al. disclose a device having a ring-shaped base (such as 10), sized and shaped to be secured about a burr hole in a skull, the base defining a lumen therethrough the is concentric to the burr hole; means (via 40 and associated components), supported by the base and carried within the access lumen, for securing an instrument extending through the access lumen and the burr hole; and a cap (90) couplable to the base sized and shaped to cover the access lumen, as recited in column 1, lines 5 – 10, column 4, lines 25 -65, columns 5 – 6, and seen in figures 9 – 10, for example.

(Office Action at 7.)

Applicant respectfully submits that Baudino does not disclose an equivalent to the corresponding elements disclosed in the specification of the present patent application under 35 U.S.C. 112, paragraph 6. For example, FIG. 3 of the present application discloses a disk-like stabilizer that (when in its closed position to secure an instrument) includes a radial slot extending inward from its outer perimeter, such as to or beyond a center point of the disk like stabilizer. Because the stabilizer can be rotated within the burr hole ring, the radial slot advantageously enables a physician to secure an instrument at any desired location within the burr hole ring, including locations that are just inside the inner circumference of the burr hole ring.

By contrast, the snap ring (40) of Baudino has opposing jaws that only allow an instrument to be secured at the few openings 57. Using the Baudino device, a physician would be unable to secure an instrument at any desired location within the burr hole ring, including locations that are just inside the inner circumference of the burr hole ring. Applicant respectfully submits that, in view of this substantial difference between the structure provided by the present patent application and those disclosed by Baudino, Baudino does not disclose an equivalent to the corresponding elements disclosed in the specification under 35 U.S.C. 112, paragraph 6, Baudino does not anticipate claim 108. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claim 108.

Concerning claim 111:

Applicant cannot find in Baudino any disclosure of a movable member, hingedly coupled to the disk to adjustably overlay a portion of the radial slot, the movable member including a catch fixing a position of the movable member with respect to the disk, wherein the movable member includes a recess sized and shaped to receive a tool for moving the movable member between open and closed positions, as presently recited in claim 111. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claim 111.

Concerning claims 112-114:

Applicant cannot find in Baudino any disclosure of a vertical stabilizer that substantially covers the burr hole, wherein the vertical stabilizer is dimensioned and configured to immobilize the portion of the instrument at any location within the access lumen, as presently recited or incorporated in claims 112 – 114.

Instead, as discussed above, Baudino discloses opposing jaws that, in their closed position, leave much of the underlying burr hole exposed, covered only by the soft polyurethane or silicone plug 90. (See Baudino at column 7, lines 7 – 9.) By contrast the apparatus claimed in claims 112-114 offers an additional level of protection for the underlying critical brain tissue.

Also, for the reasons discussed above, the present stabilizer advantageously enables a physician to secure an instrument at any desired location within the burr hole ring, including locations that are just inside the inner circumference of the burr hole ring. By contrast, the snap ring (40) of Baudino has opposing jaws that only allow an instrument to be secured at the few openings 57. Using the Baudino device, a physician would be unable to secure an instrument at

any desired location within the burr hole ring, including locations that are just inside the inner circumference of the burr hole ring.

Therefore, Applicant respectfully requests withdrawal of this basis of rejection of claims 112-114.

Documents Cited But Not Relied Upon in this Office Action

The Office Action cited the following references as pertinent to the Applicant's disclosure: U.S. Patent No. 6,662,035; U.S. Patent No. 6,609,020; U.S. Patent No. 6,482,182; U.S. Patent No. 6,356,792; U.S. Patent No. 6,321,104; U.S. Patent No. 6,210,417; and U.S. Patent No. 6,179,826. Because these references are not made part of the rejection of this Office Action, Applicant need not address the additional references. Applicant reserves the right to further address these references if later used as the basis of rejection.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

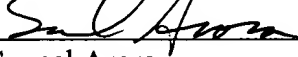
Respectfully submitted,

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Date April 12, 2004

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 12th day of April, 2004.

PATRICIA A. HULTMAN

Name



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